



March 28, 2001

Mr. Fred Hernandez
District Attorney
Edwards County
P.O. Box 1405
Del Rio, Texas 78841-1405

OR2001-1233

Dear Mr. Hernandez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 145397.

The Office of the District Attorney for Edwards, Kinney, Terrell and Val Verde Counties (the "district attorney") received a request for seven categories of information relating to the 63rd Judicial District Narcotics Task Force (the "task force"). You inform us that a portion of the requested information has been provided to the requestor, including the information responsive to request numbers one and two. You further inform us that a portion of the requested information *will* be provided to the requestor. You claim that the remaining requested information is excepted from disclosure under sections 552.102, 552.103, 552.108, and 552.231 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Initially, you state that information responsive to request numbers four, five, six and seven does not exist in the form requested. Chapter 552 of the Government Code does not require a governmental body to make available information which did not exist at the time the request was received. Open Records Decision No. 362 (1983); *see* Open Records Decision No. 452 (1986) (document not within chapter 552's purview if it does not exist when governmental body receives a request for it). Nor is a governmental body required to prepare new information to respond to a request for information. Open Records Decision No. 605 (1992), 572 (1990), 416 (1984). However, a governmental body has a duty to make a good faith effort to relate a request for information to information the governmental body holds.

Open Records Decision No. 561 at 8 (1990). If the district attorney holds information from which the requested information can be obtained, the district attorney must provide that information to the requestor unless it is otherwise excepted from disclosure. In this regard, you state that the district attorney is willing to provide the requestor with certain information as responsive to requests four, six and seven. We therefore assume you are making this information available to the requestor, including the document submitted to this office as exhibit H.

We further note that with regard to the information responsive to request number five, the dates "that the investigation that resulted in the arrest of the alleged 'Street Dealers' began and when it ended," you did not submit this information to our office for review. Pursuant to section 552.301(e), a governmental body is required to submit to this office within fifteen business days of receiving an open records request (1) general written comments stating the reasons why the stated exceptions apply that would allow the information to be withheld, (2) a copy of the written request for information, (3) a signed statement or sufficient evidence showing the date the governmental body received the written request, and (4) a copy of the specific information requested or representative samples, labeled to indicate which exceptions apply to which parts of the documents. You did not, however, submit to this office the information responsive to request number five.

Pursuant to section 552.302 of the Government Code, a governmental body's failure to submit to this office the information required in section 552.301(e) results in the legal presumption that the information is public and must be released. Information that is presumed public must be released unless a governmental body demonstrates a compelling reason to withhold the information to overcome this presumption. *See Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381-82 (Tex. App.--Austin 1990, no writ) (governmental body must make compelling demonstration to overcome presumption of openness pursuant to statutory predecessor to Gov't Code § 552.302); Open Records Decision No. 319 (1982). You have not shown such a compelling interest to overcome the presumption that the information responsive to request number five is public. Accordingly, you must release to the requestor the dates on which the investigation that resulted in the arrest of the alleged 'Street Dealers' began and ended.

We next address your raised exceptions to disclosure of the remaining information. You argue that information responsive to request number three, which seeks the name, badge number, agency, and years of experience of peace officers assigned to the task force, is excepted under sections 552.103 and 552.108. Section 552.108, the "law enforcement exception," provides:

- (a) [i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of 552.021 if: (1) release of the information would interfere with the detection, investigation or prosecution of crime; (2) it is information

that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) it is information that: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from [public disclosure] if: (1) release of the internal record or notation would interfere with law enforcement or prosecution; (2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or (3) the internal record or notation: (A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or (B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

Upon review of your arguments and the information responsive to request number three, we find that release of the information you have submitted in exhibit G that is responsive to request number three would interfere with the detection, investigation, or prosecution of crime, and therefore, this information is excepted from disclosure under section 552.108(a)(1).¹ See Open Records Decision Nos. 211 (1978), 143 (1976) (disclosure of information which would reveal identity of those engaged in undercover narcotics work protected by statutory predecessor to section 552.108). As we find that the information in Exhibit G that is responsive to request number three is excepted from disclosure under section 552.108, we need not address your argument for withholding this information under section 552.103.

To summarize, the district attorney must release information responsive to request numbers four, five, six and seven, including the information submitted labeled as exhibit H. The information responsive to request number three is excepted from disclosure under section 552.108(a)(1).

¹You inform us that some of the undercover officers listed in exhibit G are no longer with the task force, and you identify these officers. You also state that some of these officers continue in undercover work in other jurisdictions. You do not tell us, however, which of these officers continue as undercover agents. We therefore conclude that the information pertaining to all of the officers listed in exhibit G may be withheld under section 552.108(a)(1).

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for

contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, reading "Michael A. Pearle". The signature is fluid and cursive, with the first name "Michael" being the most prominent part.

Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 145397

Encl. Submitted documents

cc: Mr. Victor R. Garcia
301 East Greenwood
Del Rio, Texas 78840
(w/o enclosures)